COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

CRIMINAL APPEAL NO. 1945 OF 1983 (OLD)
CRIMINAL APPEAL NO. 1153 OF 2001 (NEW)

Madan Singh alias Madani aged 24 years
S/o Shri Anand Singh R/o Devi Road,
P.S. Kotdwar, District Pauri Garhwal. **.....** **Appellant**

Versus

State of Uttaranchal ..... **Opposite Party**

Sri Rajendra Kotiyal, learned counsel for the Appellant.
Sri Amit Bhatt assisted by Shri Manoj Chandra Joshi for the Opposite Party.

Coram: Hon. P.C. Verma, J.
Hon. B.C. Kandpal, J.

Dated: November 17, 2004

This criminal appeal arising out against the judgment and order dated 10.08.1983 passed by Sessions Judge, Pauri Garhwal in Sessions Trial No. 26 of 1981 State Vs. Madan Singh alias Madani, convicting the appellant Madan Singh alias Madani under Section 302 Indian Penal Code and sentencing thereof for life imprisonment.

Brief facts of the prosecution case are that complainant Anand Singh owned an automobile workshop known as Chamu Automobiles and in this workshop deceased Isaac Rajpal used to work. On 19.06.1981 at 9:30 P.M., the deceased after finishing the work was going to Rajendra Singh Rawat, Ranger, in order to repair the tractor. He was accompanied with Tinku alias Mahendra Singh Rawat. As soon as the deceased and his companions reached near the water tank at 10:30 P.M., they met accused Madan Singh alias

Madani and other assailants namely Kaliya, Dhani Ram & Bhim Bahadur. Madan Singh alias Madani had an iron rod (Sabbal) while his associates had Dandas. The appellant Madani and his associates asked the deceased and his companion as to where they were going and also asked for some money to take liquor. When the deceased replied that they had been going for an urgent work and they had no money, thereupon appellant and his associates started abusing and began to assault the deceased Issac Rajpal.

The appellant Madani gave a blow by means of iron rod (Sabbal) on the head of the deceased. While Kaliya & Bhim Singh assaulted him (the deceased) with Dandas. The deceased fell down on the earth where upon his companions raised an alarm, which attracted the passers by.

One Chowkidar, Harak Bahadur in the Jal Nigam Office who was on his duty also rushed to the place of occurrence and he also witnessed the incident. Harak Bahadur (the Chowkidar) was also assaulted by the assailants with Bricks and he sustained injuries. The assailants including the appellant thereafter fled away from the scene of the occurrence.

Tinku, the companion of the deceased rushed to Anand Singh and told him the entire incident. Anand Singh is the father of the deceased who reached the spot on Jeep and saw his son lying on the road. Anand Singh took his son to hospital and got him admitted over there. The injured had died in the hospital at about midnight.

The complainant Anand Singh alias Chamu thereafter lodged the First Information Report on 20.06.1981 at 2:10 A.M. at Police Station, Kotdwar.

After the registration of the case, the injured on the body of the deceased was prepared and thereafter the body was sent for Autopsy.

The post-mortem on the body of the deceased Issac Rajpal was conducted by Dr. P.C. Fuloria, on 21.06.1981 at 10:00 A.M.

Dr. P.C. Fuloria, P.W. 1 found following ante-mortem injuries on the body of the deceased: -

"A contusion red in colour 4 cm x 5 cm over the forehead in the middle 10 cm above from right eyebrow on section underneath haematuma present in an area of 10 cm x 12 cm underline bone, fracture vertically. Fracture extending from the bridge of nose 9 cm towards the top of skull in the middle only on the table front bone is fractured. Orbitae plate of right side of parietal bone is fractured."

The Doctor on internal examination of the dead body found the Membrane beneath the injury were intact and congested and also found haemateuma over the whole of front half of the brain. The doctor opined that the death was caused as a result of head injury by blunt object.

The Investigating Officer recorded the statement of the witnesses, prepared the site plan and after completing the investigation submitted the charge sheet against the accused/appellant Madan Singh alias Madani on 16.07.1981.

After the charge sheet was submitted, the appellant was committed to the Court of Sessions and the learned Sessions Judge Pauri Garhwal on 15.06.1982 framed the charge under Section 302 I.P.C. The accused denied all the charges leveled against him and claimed his trial.

The prosecution in order to bring the guilt of the accused to home produced P.W. 1 Dr. P.C. Fuloria, P.W. 2 Harak Bahadur, P.W. 3 Constable Isam Pal Singh, P.W. 4 Anand Singh alias Chamu, P.W. 5 Kolwin Silas, P.W. 6 A.W. Singh, P.W. 7 Hayat Singh Dev-witness of the recovery of iron rod (Sabbal), P.W. 8 Mahendra Singh Rawat alias Tinku and P.W. 9 S.I. Sardar Singh, Investigating Officer. The prosecution apart of the oral evidence, produced certain documentary evidence also.

After the evidence of the prosecution was over, the statement of the accused was recorded under 313 Cr.P.C. The accused/appellant did not produce any evidence in his defence.

The learned trial court after having perused the evidence on record and hearing the learned Counsel for the parties convicted the accused Madan Singh alias Madani under Section 302 I.P.C. and sentenced him to life imprisonment vide judgment and order dated 10.08.1983.

Feeling aggrieved by the aforesaid impugned judgment and order, the convicted Madan Singh alias Madani filed an appeal before the Hon’ble High Court of Allahabad which has been transferred to this Court for disposal after creation of the new State.

We have heard the learned counsel for the Appellant as well as learned A.G.A. and perused the record.

The learned counsel for the appellant has argued that First Information Report in this case is ante-timed. He has invited our attention towards the Inquest Report and has tried to submit that the Inquest Report does not indicate the case crime number, name of the informant as well as time of lodging the First Information Report. The learned counsel for the appellant has also tried to submit that the copy of the First Information Report was also not available with the Police Officer at the time of conducting the inquest on the dead body. He has also submitted that the First Information Report is quite belated and the same casts a doubt on the prosecution case. He further submitted that the Special Report was sent from the Police Station to the Magistrate concerned quite belated.

We do not find any force in the argument advanced by the learned counsel for the appellant.

Perusal of the record shows that the incident took place at about 10:30 P.M. and after the aforesaid incident, one Tinku who was in the company of the deceased went to the father of the deceased in order to intimate him about the incident. Thereafter, the complainant rushed to the spot and took his son to the hospital who was in a precarious condition. As per the statement of P.W.4 Anand Singh alias Chamu, his son died in between 1-2 in the night and thereafter he got the First Information Report scribed by one Shashi Prasad and lodged the same at the Police Station at 2:10 A.M. on 20.06.1981. Nothing has come out in the cross-examination of

P.W.4 Anand Singh informant which may suggest that the First Information Report was lodged at Police Station by him after due deliberation.

Non-mentioning of the crime number, name of the accused as well as name of the informant in the Inquest Report is not going to vitiate the trial as per the settled law. In case, if there are some laches on the part of the investigation, the same is not going to discard the prosecution case.

It reveals from the record that the deceased was in a precarious condition and his father took him to the hospital hence certainly the informant must be busy in looking after his son in the hospital and only after his son died in the hospital, he went to the Police Station in order to lodge the report. Therefore, under these circumstances, we do not find any undue delay in lodging the First Information Report. Moreover, we also do not find anything on record, which may suggest that the First Information Report can be treated as ante-time.

The learned counsel for the appellant has next argued that the case rests on the single testimony of Harak Bahadur, P.W.2, which cannot be said to be trustworthy, and the conviction based on account of the testimony of this witness is absolutely unjust and improper.

We again do not find any force in this argument. We have closely assessed the evidence of P.W. 2 Harak Bahadur who has deposed in his statement that at about 10:30 P.M. on the date of the occurrence, he was present at the gate of Jal Nigam. The office of

Jal Nigam is situated at Devi Road where the incident is alleged to have taken place. This witness has stated that he knew Madan Singh alias Madani and at the time of the occurrence, he saw that Madan Singh and his associates were assaulting Issac (the deceased). This witness has specifically stated that Madan Singh alias Madani was having an iron rod (Sabbal) in his hand and he assaulted with that iron rod at Issac. This witness has also stated that the associates of Madan Singh alias Madani were having Dandas in their hands and they were also beating the deceased. This witness has further deposed that after sustaining the injuries by Sabbal (iron rod) Issac fell down on earth. This witness has further deposed that the accused persons assaulted him with Bricks, which hit his head, and he also sustained injuries.

The learned counsel for the appellant has submitted that the presence of this witness is highly doubtful in the light of the First Information Report. As it reveals from the First Information Report that this witness reached at the place of the occurrence after the incident was over.

Again, we do not find any force in this argument as the First Information Report has been lodged by a person who is not the eyewitness. P.W. 3 is the informant and he received information through Tinku, (the companion) of the deceased. Therefore, if there is any deviation in the continuity made by the informant in the First Information Report, then the same is not going to discard the prosecution case.

The presence of Harak Bahadur finds strength on the basis of the evidence of P.W. 8 Mahendra Singh Rawat alias Tinku. Although, this witness has turned hostile but he has deposed that Harak Bahadur also reached at the spot at the time of the occurrence. Therefore, presence of Harak Bahadur eyewitness of the occurrence cannot be doubted in view of the deposition of Mahendra Singh Rawat alias Tinku who has turned hostile.

It is worthy to mention here that neither Harak Bahadur nor the informant has got any sort of enmity with the accused/appellant, therefore, we do not find any reason available either with the eyewitness or the informant to falsely implicate the accused/appellant in this case.

It is again to mention here that injuries sustained by Harak Bahadur find place in G.D. No.4 dated 20.06.1981 at 2:10 A.M. This witness P.W.2 Harak Bahadur also accompanied the informant to Police Station as it reveals from the perusal of the aforesaid G.D. Hence, presence of injuries on the person of Harak Bahadur again rules out any possibility of his absence at the spot.

An other important aspect also cannot be ignored that the iron rod used by the accused/appellant in the commission of crime has subsequently been recovered on the pointing-out of the accused/appellant himself. P.W. 7, Hayat Singh in his deposition has clearly stated that on 21.06.1981, Madan Singh alias Madani was arrested by the Police and during the course of investigation, he assured the Police that the iron rod (Sabbal) could be recovered and the Police took him ahead to Devi Temple. Thereafter,

accused/appellant took the Police to the bank of the canal and he dug the iron rod from the sand and handed it over to the Police. Therefore, recovery of the iron rod used in the commission of crime on the pointing-out of the accused/appellant is an important peace of evidence, which connects the appellant and none else with the commission of crime.

The ocular version again finds absolute corroboration with the medical evidence. As per the ocular version adduced by the prosecution, it was the appellant Madan Singh alias Madani who assaulted at the head of the deceased with iron rod (Sabbal). The doctor who conducted the post-mortem, found head injury on the person of the deceased and opined that the death could have been caused on account of the head injury. The doctor found the bone beneath the injury fractured and there was haematoma in the brain. The doctor has specifically opined that the death could have been caused by the assault of Sabbal. A bald suggestion was made by the defence that this injury could have been caused by the fall over stone from the height of 6-7 feet, but this suggestion does not extend any help to the accused/appellant as it is neither the case of the prosecution nor of the defence that the death of the deceased was caused on account of fall from the height of 6 to 7 feet. Therefore, the medical version does not rule-out ocular version in any manner.

The prosecution has successfully established the manner of the incident as has been alleged by it. We do not find any infirmity in the evidence adduced by the prosecution available on the record. We are of the view that the conviction of the accused/appellant under

Section 302 and sentenced thereon is absolutely justified. We do not find any ground to interfere in the impugned judgment and order passed by the court below by which the appellant has been convicted under Section 302 and sentenced to life imprisonment.

The appeal thus fails and is dismissed.

The appellant is on bail. He shall forthwith surrender before the C.J.M., Pauri Garhwal to serve-out the sentence. The C.J.M. Pauri is also directed to secure arrest of the appellant Madan Singh alias Madani by issuing non-bailable warrants and send him to jail to serve-out the sentence and submit compliance report within a month.

Office is directed to send the record of the lower court with a copy of this judgment for information and necessary action.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

Rajeev Dang